

Class VI Underground Injection Control Program

Attorney General's Statement

I hereby certify, pursuant to my authority as Attorney General for the State of North Dakota and in accordance with the provisions of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.*, as amended, and 40 CFR 145.24(a), that in my opinion the laws of the State of North Dakota provide adequate authority to apply for, assume and carry out the program set forth in the Program Description submitted by the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division. The specific authorities provided are contained in the statutes or regulations that are lawfully adopted at the time this Statement is signed and which will be in full force and effect on the date of approval of this program, as specified below:

1. Prohibition of Unauthorized Injection

Federal law prohibits any underground injection unless authorized by permit issued under the UIC program (Section 1421(b)(1)(A) of the Safe Drinking Water Act (SDWA), 40 CFR 144.11, and 144.31 (a)).

State Statutory and Regulatory Authority

North Dakota Century Code Chapter 38-22

North Dakota Century Code 38-22-04

North Dakota Administrative Code 43-05-01-02.5

Remarks of Attorney General

Pursuant to N.D.C.C. chapter 38-22 the Commission has the authority to promulgate regulations governing the geologic storage of carbon dioxide as found in N.D.A.C. chapter 43-05-01 includes Class VI injection wells as defined in the Code of Federal Regulations. N.D.C.C 38-22-04 allows the geologic storage of carbon dioxide if permitted by the Industrial Commission. N.D.A.C. 43-05-01-02.5 provides that no underground injection may be conducted without first obtaining a permit from the North Dakota Industrial Commission. Furthermore, N.D.A.C. 43-05-01-02.5 prohibits construction of an underground injection well prior to the issuance of a permit.

2. Prohibition of movement of fluid into underground sources of drinking water.

Under federal law no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a

violation of any primary drinking water regulation or may otherwise adversely affect the health of persons (Section 1421(b)(1)(A) of the Safe Drinking Water Act (SDWA) and 40 CFR 144.12 (a)).

State Statutory and Regulatory Authority

North Dakota Administrative Code 43-05-01-02.2

Remarks of Attorney General

N.D.A.C. 43-05-01-02.2 is virtually identical to the federal requirement and meets the stringency.

3. Prohibition of Endangering Drinking Water Sources

State authority, which provides authorization of underground injection by permit, shall require that the applicant for a permit to inject must satisfy the State that underground injection will not endanger drinking water sources (Section 1421(b)(1)(B)(i)).

State Statutory and Regulatory Authority

North Dakota Administrative code 43-05-01-02.2

Remarks of Attorney General

N.D.A.C. 43-05-01-02.2 is virtually identical to the federal requirements in 40 CFR §144.12 (a). No storage operator shall conduct any injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may endanger underground sources of drinking water or may adversely affect the health of persons. The applicant must show that the objectives of this section are fulfilled.

4. Authority to Issue Permits or Rule

The SDWA requires State authority to issue permits or promulgate rules for underground injection not less stringent than regulations of the United States Environmental Protection Agency (Section 1422(b)(1)(A)(i) and 40 CFR Parts 124, 144, and 146).

State Statutory and Regulatory Authority

North Dakota Administrative code 43-05-01-02.5

Remarks of Attorney General

N.D.A.C. 43-05-01-02.5 mandates that any underground injection of carbon dioxide for the purpose of geologic storage must be authorized by permit. There are no statutes preventing such regulations or permits from being at least as stringent as the regulations promulgated by the United States Environmental Protection Agency.

5. Authority to Condition Authorized Injection Activities

The SDWA requires State authority to condition permits in accordance with conditions applicable to all permits (40 CFR 144.51 and 144.52)

State Statutory and Regulatory Authority

North Dakota Century Code 38-22-09

North Dakota Administrative Code 43-05-01-07.3

North Dakota Administrative Code 43-05-01-07.4

Remarks of Attorney General

N.D.C.C. 38-22-09 allows the Industrial Commission to include in a permit or order all things necessary to carry out N.D.C.C. chapter 38-22 and to protect and adjust the respective rights and obligations of persons affected by geologic storage of carbon dioxide. N.D.A.C 43-05-01-07.3 requires specific conditions to be placed on all storage facility permits. N.D.A.C 43-05-01-07.4 allows the commission to establish additional conditions to prevent the endangerment of underground sources of drinking water.

6. Authority to Impose Compliance Evaluation Requirements

The SDWA requires the State to have authority for entry in or onto a site or facility for the purpose of inspections (Section 1421(b)(1)(C) and 40 CFR 144.51 (i) (1) and (3)).

State Statutory and Regulatory Authority

North Dakota Century Code 38-22-03 (3)

North Dakota Administrative Code 43-05-01-04

North Dakota Administrative Code 43-05-01-07.3 (9) (a) and (c)

Remarks of the Attorney General

N.D.C.C. 38-22-03 (3) grants the Commission authority to inspect equipment and facilities; to observe, monitor, and investigate operations; and to inspect records required to be maintained at the facility. N.D.A.C. 43-05-01-04 grants the Industrial Commission and its authorized agents the authority to have access to all storage facility records wherever located. N.D.A.C. 43-05-01-07.3 (9)(a) and (c) is virtually identical to the federal requirement in 40 CFR 144.51 (i)(1) and (3).

7. Authority for Enforcement Requirements

- a. The State agency must have authority to immediately restrain any person from engaging in any unauthorized injection that is endangering or causing damage to public health or the environment (40 CFR §145.13(a)(1)).

State Statutory and Regulatory Authority

North Dakota Century Code 38-08-11 (2)

Remarks of the Attorney General

Pursuant to N.D.C.C. 38-08-11 (2) the Industrial Commission may issue an emergency order without notice or hearing. An unauthorized injection that is endangering or causing damage to public health or environment would certainly qualify as an emergency.

- b. The State Agency must have authority to sue in courts of competent jurisdiction to abate any threatened or continuing violation of any program requirement or permit condition, without the necessity of prior revocation of a permit (40 CFR §145.13(a)(2)).

State Statutory and Regulatory Authority

North Dakota Century Code 38-08-17 (1)

Remarks of the Attorney General

N.D.C.C. 38-08-17 (1) grants the Industrial Commission the authority to bring suit in district court to restrain any violation or threatened violation of any statute, rule or order. Prior revocation of permit is not required.

- c. The State agency must have authority to assess or sue to recover civil penalties and seek criminal remedies (40 CFR 145.13 (a)(3)(i)).
 - (1) Civil Penalties shall be recoverable in at least the amount of \$2500 per day.

- (2) Criminal fines shall be recoverable in at least the amount of \$5000 per day against any person who willfully violates any program requirement.

State Statutory and Regulatory Authority

North Dakota Century Code 38-22-18

Remarks of the Attorney General

N.D.C.C. 38-22-18 provides that any person who violates a provision of N.D.C.C. chapter 38-22 or any commission rule or order under chapter 38-22 is subject to civil penalty of up to \$12500 for offense, and each day's violation is a separate offense.

- d. The State agency must have authority to assess or seek civil penalties that are appropriate to the violation (40 CFR 145.13(c)).

State Statutory and Regulatory Authority

North Dakota Century Code 38-22-18

Remarks of the Attorney General

The Industrial Commission has authority to seek civil penalties of an amount up to \$12500 per day violation. In setting an action seeking civil penalties, the Commission can consider factors such as those set out in 40 CFR 145.13(c).

- e. The State must provide for public participation in the State enforcement process by providing either (1) authority that allows an interested party to intervene as a matter of right in any civil or administrative action (40 CFR 145.13(d))

State Statutory and Regulatory Authority

North Dakota Century Code 38-08-11 (4)

North Dakota Century Code 38-08-17 (2)

North Dakota Century Code Chapter 32-40

Remarks of the Attorney General

North Dakota law provides for public participation in the enforcement process on both the administrative and district court levels. N.D.C.C. 38-08-11 (4) provides that any interested person may initiate an enforcement action before the Industrial Commission. N.D.C.C. 38-08-17 (2) provides that any person adversely affected by a violation of N.D.C.C. chapter 38-08. may request the Industrial Commission

to bring suit to enjoin the violation. If the Commission fails to bring suit within ten days after receipt of the request, the person making the request may bring suit in his own behalf to restrain the violation. The Environmental Law Enforcement Act N.D.C.C. chapter 32-40 also permits any person aggrieved by the violation of any environmental statute to bring suit to enforce the statute or collect damages, or both.

8. Authority for public Participation in Permit Processing

The Federal program requires State authority to allow for adequate public involvement and participation in permit processing, including draft permits, public comment, public hearing, and response to comments on the final permit (40 CFR Part 124).

State Statutory and Regulatory Authority

North Dakota Century Code 38-22-06 (1)

Remarks of the Attorney General

Pursuant to N.D.C.C. 38-22-06 (1), the Industrial Commission shall hold a public hearing before issuing a permit.

9. Authority to apply Technical Criteria and Standards for Control of Underground Injection not less stringent than 40 CFR Part 146 (Section 1421(a)(1) and (b) (1)).

State Statutory and Regulatory Authority

North Dakota Administrative Code 43-05-01-11

North Dakota Administrative Code 43-05-01-11.1

North Dakota Administrative Code 43-05-01-11.2

North Dakota Administrative Code 43-05-01-11.3

North Dakota Administrative Code 43-05-01-11.4

North Dakota Administrative Code 43-05-01-11.5

Remarks of the Attorney General

Pursuant to N.D.A.C. 43-05-01-11 (Injection Well Construction and Completion Standards), N.D.A.C. 43-05-01-11.1 (Mechanical Integrity – Injection Wells), N.D.A.C. 43-05-01-11.2 (Logging, Sampling, and Testing Prior to Injection Well Operation), N.D.A.C. 43-05-01-11.3 (Injection Well Operating Requirements).

N.D.A.C. 43-05-01-11.4 (Testing and Monitoring Requirements), N.D.A.C. 43-05-01-11.5 (Injection Well Plugging), the Industrial Commission has authority to apply technical standards at least as stringent as the criteria ay 40 CFR Part 146. Furthermore, the Commission can include technical standards as permit conditions as provided in N.D.A.C. 43-05-01-07.4.

10. Authority to Identify Aquifers that are Underground Sources of Drinking Water and Exempted Aquifers (40 CFR 144.7 and 146.4)

State Statutory and Regulatory Authority

North Dakota Administrative Code 43-02-05-03

North Dakota Administrative Code 43-05-01-02.4

Remarks of the Attorney General

The provisions for exempted aquifers contained in N.D.A.C. 43-02-05-03 and N.D.A.C. 43-05-01-02.4 are essentially identical to Federal regulations.

11. Certification of Statutes as Independent Legal Counsel

The undersigned attorney does hereby certify that pursuant to the laws of the State of North Dakota he is counsel for the North Dakota Industrial Commission, having full legal authority to independently represent the Industrial Commission in court in all matters pertaining to the State program described herein.

Attorney General